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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.46 of 2003

Commissioner of Income-Tax
Coimbatore. ... Appellant

Vs.

M/s.Gnanambikai Mills Ltd.
Coimbatore ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 8.8.2002 made in ITA No.2777/Mds/1993 for the assessment year 1991-92 against the order of the Commissioner of Income Tax Appelas Coimbatore dated 28/10/93 in ITA.No. 603-C/93-94 against the order of the Deputy Commissioner of Income Tax Special Range-II Coimbatore dated 1.9.93 in PAN/GIR.No.Co-1047.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyer

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in ITA No.2777/Mds/1993, dated 8.8.2002.

2.1. The Revenue is the appellant. During the relevant assessment year 1991-92, the assessee filed a return of income on 27.12.91 in response to a notice u/s. 143(2) admitting a total income of Rs.6,43,610/-. The assessing officer inter alia disallowed a sum of Rs.13,08,387/- being bonus paid in excess of provision made, and held that the same will be allowed on payment basis in the following assessment year.

2.2. Aggrieved against the said order of the assessing officer, the assessee went on appeal before the Commissioner of Income-tax (Appeals), who, by order dated 28.10.1993, upheld the order of the assessing officer,

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following its earlier order, holding that where the quantum of bonus is decided by way of a settlement between the workers and the Management, it is only a contractual liability and hence, deduction can be claimed only in the year in which the actual quantum of bonus payable in excess of the provision in the account became an ascertained liability. On further appeal by the assessee before the Income-tax Appellate Tribunal, the Tribunal, by order dated 8.8.2002 allowed the appeal holding that it is not a contractual liability and it is a settlement between the employer and the employees without being a dispute between them and hence, the amount as provided and paid subsequently shall be allowed as a deduction. Aggrieved by the same, the present appeal has been preferred by the Revenue raising the following substantial questions of law:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the bonus paid subsequently on account of a settlement between the management and the employees is a statutory liability ?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the bonus not paid within the relevant previous year is deductible on the ground that there was no dispute between the parties, and therefore, the liability is statutory, and not contractual ? "

3. Heard both sides.

4. Mr.T.Ravikumar, learned standing counsel appearing for the Revenue fairly submits that the issues raised in the above questions are squarely covered against the Revenue by the decision of this Court in Commissioner of Income-tax v. Lakshmi Machine Works Ltd [(2000) 241 I.T.R. 53].

5. In Commissioner of Income-tax v. Lakshmi Machine Works Ltd [(2000) 241 I.T.R. 53], cited supra, this Court, while dealing with the issue whether the assessee can claim the amount paid after the end of the accounting year to the extent the same was in excess of the provision that had been made in the accounts, as an item of expenditure in the year of account, held as follows:-

> " Section 19 of the Payment of Bonus Act, 1965, sets a time-limit for payment of bonus and provides that the bonus payable shall be paid in cash by the employer within eight months from the close of the accounting year, where there is no dispute and where there is a dispute pending before any authority under section 22 of the Payment of Bonus Act, within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute. Therefore, there can be no doubt whatsoever that the assessee/employer who is subject to the Payment of Bonus Act, is under statutory duty

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to pay bonus to his employees and in cases where there is no dispute pending under section 22 before any authority, such payment must be effected within eight months from the date of closing of the accounting year. The assessee, who follows the mercantile system of accounting, therefore, must necessarily provide for the payment of bonus to his employees and it is only the quantification that is postponed."

...

" ... in the instant case, according to the employer/assessee, it had been the habit of the employer in the past to offer to pay bonus at a lower rate while the employees made a claim for payment at a higher rate and the actual rate at which the payment was to be made was worked out in a settlement. The settlement, therefore, could not be regarded as one which was contrary to any of the provisions of the Act, or as an instrument by which a statutory liability was transformed into a non-statutory liability. In the circumstances of the case, the settlement was the quantification of the liability with the willing co-operation of the employer. The amounts paid towards discharge of the statutory liability, therefore, were amounts which were relatable to the relevant years of account and the assessee/employer who followed the mercantile system was entitled to claim the same as an item of expenditure in the year of account."

6. Admittedly, in the instant case, as rightly held by the Tribunal, the amount paid after the end of the accounting year, which was in excess of the minimum bonus prescribed under the Bonus Act and what is determined as bonus payable by the employer was only a settlement between the workers and the management and not on the demand made by the workers to settle the disputes persisting between them. Hence, the law laid down in the above said case is squarely applicable to the present case.

In view of the settled proposition, the questions of law raised in this appeal are answered in the affirmative, against the Revenue and in favour of the assessee. Accordingly, the appeal stands dismissed. No costs.

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Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,Besant Nagar,
Bench "B", Chennai-90.

2.The Commissioner of Income Tax
(Appeals), Coimbatore.

3.The Deputy Commissioner of Income-tax,
Special Range II, Coimbatore.

4.The Comissioner of Income Tax Coimbatore,
+ One cc to Mr. r. Vijayaraghavan Advocate SR 7077
+ One cc to mr. N. Murali Kumaran Advocate sR 7007
TEJ (co)
sg 21/2/07

T.C.(A) No.46 of 2003

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